



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **ARCHIVES AND RECORDS ACT**

## PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## ARCHIVES AND RECORDS ACT

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## ARCHIVES AND RECORDS ACT

### CHAPTER A-19.1

#### 1. Definitions

##### (1) In this Act

- (a) “**Committee**” means the Public Records Committee established pursuant to section 13;
- (b) “**Department**” means the Department for which the Minister is responsible except where the context otherwise requires;
- (c) “**head**”, in relation to a public body, means
  - (i) the member of the Executive Council who presides over, or is responsible for, the public body by order of the Lieutenant Governor in Council, where the public body is
    - (A) a department, branch or office of the Government, or
    - (B) a body referred to in subclause 1(1)(f)(iii) or (iv) that reports directly to that member of Executive Council respecting its day-to-day operations,
  - (ii) the Chief Electoral Officer, where the public body is the office of the Chief Electoral Officer,
  - (iii) the person designated as the head of the public body in the regulations, where such a designation has been made, or
  - (iv) the presiding officer of the public body, where subclauses (i) to (iii) do not apply;
- (d) “**Minister**” means the Minister of the Government designated by the Lieutenant Governor in Council to have the responsibility for the administration of this Act;
- (e) “**Provincial Archivist**” means the Provincial Archivist appointed pursuant to section 4 and includes a designate;
- (f) “**public body**” means
  - (i) a department, branch or office of the Government,
  - (ii) the office of the Chief Electoral Officer,
  - (iii) a body designated as a public body in the regulations pursuant to clause 20(c), and
  - (iv) an agency, association, board, commission, committee, council, foundation, office, tribunal, task force or other body, whether incorporated or unincorporated, of which all the members, or all the members of its governing body, are
    - (A) appointed by order of the Lieutenant Governor in Council,
    - (B) officers or employees of the Government, or

- (C) working under contract, under the supervision of an officer or employee of the Government;
- (g) “**records**” include any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, video tape, electronic data, machine readable record, and any other documentary material, regardless of physical form, characteristics or media on which it is stored, and any copy thereof;
- (h) “**records retention and disposition schedule**” means a comprehensive description and classification of all records of a public body with a plan governing the life cycle of the records from creation or receipt to disposition or permanent preservation.

#### **Not public bodies**

- (2) For greater certainty, the following are not public bodies:
  - (a) the Legislative Assembly and its committees;
  - (b) the Legislature;
  - (c) the office of the Clerk of the Legislative Assembly;
  - (d) the office of the Speaker of the Legislative Assembly;
  - (e) the office of a political party leader or caucus;
  - (f) the office of the Auditor General;
  - (g) the office of the Conflict of Interest Commissioner;
  - (h) the office of the Information and Privacy Commissioner;
  - (i) any other office, not including the office of the Chief Electoral Officer, appointed by, or within the jurisdiction of, the Legislative Assembly or the Speaker of the Legislative Assembly. *2001,c.28,s.1; 2015,c.20,s.1.*

## **2. Application**

- (1) Subject to subsection (2), this Act applies to all records in the custody or under the control of a public body, including court administration records.

#### **Exceptions**

- (2) This Act does not apply to
  - (a) a record in a court file, a record of a judge of any court in the province or judicial administration records;
  - (b) personal, political, party or constituency records of a member of the Legislative Assembly or Executive Council; and
  - (c) material placed in the custody of the Public Archives and Records Office by or for a person, agency or an organization other than a public body. *2001,c.28,s.2.*

## **3. Purposes of this Act**

The purposes of this Act are

- (a) to vest the records of public bodies in the Government;
- (b) to provide for the comprehensive and accurate description and classification of records in the custody or under the control of a public body; and
- (c) to authorize the retention and disposition of the records of public bodies. *2001,c.28,s.3.*



**4. Minister**

- (1) The Minister is responsible for the administration of this Act.

**Provincial Archivist**

- (2) The Minister shall appoint an employee of the Department to be the Provincial Archivist, who shall, at the direction of the Minister, ensure that the intent and purposes of this Act are carried out. *2001, c.28, s.4.*

**5. Public Archives and Records Office**

- (1) There is hereby established the Public Archives and Records Office of Prince Edward Island, which shall be a part of the department.

**Objects and functions of Office**

- (2) The objects and functions of the Public Archives and Records Office are
- (a) to acquire and preserve private and public records of provincial significance and to provide access to them;
  - (b) to develop policies, standards, procedures and services for effective records management in government;
  - (c) to be the permanent repository of records of public bodies; and
  - (d) to encourage and assist archival activities and the archival community. *2001, c.28, s.5.*

**6. Powers of Provincial Archivist**

- (1) The Provincial Archivist may carry out such activities as are incidental or conducive to the attainment of the objectives and functions of the Public Archives and Records Office and may
- (a) acquire records and obtain the care, custody or control of records;
  - (b) take such measures as are necessary to classify, describe, identify, appraise, preserve and restore records;
  - (c) provide access to records, in accordance with the laws of the province;
  - (d) place, by agreement with the donor of private papers and related material, such restriction on the use of the papers as may be stipulated in the agreement;
  - (e) provide information, consultation, reference and other services related to archives;
  - (f) make known information concerning archives through publications, exhibitions, the copying of records and such other means as the Provincial Archivist may consider expedient;
  - (g) advise and assist public bodies in meeting the requirements of this Act and related enactments;
  - (h) provide reproduction, records storage, and other archival records services to public bodies;
  - (i) provide training in archival practices and related management of records;
  - (j) provide professional and technical support in aid of archival activities and the archival community;
  - (k) cooperate with and undertake activities with organizations interested in archival matters and related records management through exchanges, joint projects and such other means as the Provincial Archivist may consider expedient;
  - (l) carry out such other functions as the Lieutenant Governor in Council may specify.

**Destruction of records**

- (2) Subject to the terms and conditions under which records have been acquired or obtained, the Provincial Archivist may destroy or dispose of any record in the Public Archives and Records Office, where the Provincial Archivist considers that it is no longer necessary to retain the record. *2001,c.28,s.6.*

**7. Records may not be destroyed, except**

No record under the control of a public body, whether or not it is surplus property of a public body, shall be destroyed or disposed of except in accordance with this Act. *2001,c.28,s.7.*

**8. Access to records by Provincial Archivist**

- (1) Notwithstanding any other Act, the Provincial Archivist shall have access to any record in respect of which a proposed or approved records retention and disposition schedule under this Act applies.

**Confidentiality**

- (2) The Provincial Archivist shall, with respect to access to the records referred to in subsection (1), satisfy any confidentiality requirements applicable to, and take any oath of confidentiality required to be taken by persons who normally have access to those records.

**Where consent required**

- (3) For the purposes of this section, the Provincial Archivist shall have access to a record restricted by an enactment only with the consent of the head of that public body. *2001,c.28,s.8.*

**9. Transfer to Provincial Archivist**

The records of public bodies that, in the opinion of the Provincial Archivist, are of archival importance shall be transferred to the care and control of the Provincial Archivist in accordance with records retention and disposition schedules and other means developed in accordance with this Act. *2001,c.28,s.9.*

**10. Where public body no longer exists**

Except as otherwise directed by the Lieutenant Governor in Council, the Provincial Archivist shall have the care and control of all records of any public body, the functions of which have ceased. *2001,c.28,s.10.*

**11. Library, museum materials**

Sections 7-9, inclusive, do not apply to records that are library or museum materials kept by a public body for reference or exhibition purposes. *2001,c.28,s.11.*

**12. Certified copy**

A copy of any document in the custody of the Public Archives and Records Office, certified by the Provincial Archivist to be a true copy, may be admitted in evidence as *prima facie* proof of the authenticity and correctness of the record and of the contents of the record without proof of the signature or appointment of the Provincial Archivist. *2001,c.28,s.12.*





**13. Public Records Committee**

- (1) There shall be a Public Records Committee consisting of
  - (a) the Provincial Archivist;
  - (b) the Deputy Minister of Finance or designate;
  - (c) the Clerk of the Executive Council;
  - (d) the Deputy Minister of Justice and Public Safety and Deputy Attorney General or designate; and
  - (e) not more than two other persons appointed by the Lieutenant Governor in Council.

**Chair**

- (2) The Provincial Archivist shall be the Chair of the Committee. *2001,c.28,s.13; 2010,c.31,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

**14. Duties of Committee**

The Committee shall

- (a) review records retention and disposition schedules submitted to it by a public body;
- (b) review procedures for the retention, preservation, destruction or alienation of records identified in a records retention and disposition schedule; and
- (c) approve records retention and disposition schedules. *2001,c.28,s.14.*

**15. Compliance with retention and disposition schedule**

No person shall destroy, alienate or transfer to the Public Archives the records of a public body except in accordance with a records retention and disposition schedule for those records approved by the Committee pursuant to this Act. *2001,c.28,s.15.*

**16. Preparation of schedule**

- (1) Every head of a public body having custody or control over records shall prepare one or more records retention and disposition schedules that
  - (a) describe, classify and index the records in the custody or under the control of the public body;
  - (b) govern the life cycle of the records, including
    - (i) the creation, receipt, handling, control, organization, retention, maintenance, security, preservation, conservation, destruction or alienation of the records,
    - (ii) the period prescribed for retention of records in the custody or under the control of the public body, and
    - (iii) the disposition of the records, including transfer to the Public Archives and Records Office; and
  - (c) provide for retention periods and establish whether each class of record is to be permanently preserved, destroyed or otherwise alienated from the custody or control of the public body.

**Schedule to be submitted to Committee**

- (2) The head of a public body shall submit each records retention and disposition schedule to the Committee for review and approval by forwarding it to the Provincial Archivist.

**Approval of schedule**

- (3) Upon completion of its review of a records retention and disposition schedule, the Committee shall
- (a) approve the records retention and disposition schedule; or
  - (b) return the records retention and disposition schedule to the head of the public body with the Committee's recommendations.

**Effective date of schedule**

- (4) A records retention and disposition schedule of a public body has effect upon approval by the Committee. *2001,c.28,s.16.*

**17. Duties of head of public body**

The head of a public body shall

- (a) adhere to each records retention and disposition schedule for which the head is responsible and that has been approved in accordance with this Act; and
- (b) protect and maintain records in the custody or under the control of the public body so that records are
  - (i) usable and accessible,
  - (ii) transferable,
  - (iii) legible and understandable, and
  - (iv) maintained in formats, media and conditions that ensure retention and preservation in compliance with the records retention and disposition schedules. *2001,c.28,s.17.*

**18. Destruction or transfer of court records**

- (1) Notwithstanding clause 2(2)(a) and subject to subsection (2), the Committee may order that any court record be destroyed or transferred to the Public Archives and Records Office immediately or on the expiration of a period specified in an approved records retention and disposition schedule.

**Subject to approval of Minister of Justice and Public Safety and Attorney General**

- (2) An order pursuant to subsection (1) may be made only upon the approval of the Minister of Justice and Public Safety and Attorney General after receipt of a descriptive list of the records proposed for disposal, as compiled by the Provincial Archivist and a judge of the court.

**Records at least 10 years old**

- (3) No record filed with any court shall be transferred or destroyed under this section unless ten years have elapsed since the date upon which it was filed and there shall be excepted from any order made under subsection (1) any records which are still in full force and effect.

**Currently effective records exempt**

- (4) No order or other record of a court that continues in force or effect shall be destroyed or transferred under this section.

**Application**

- (5) This section applies to all records on file with any court at the coming into force of this Act. *2001,c.28,s.18; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*



**19. Records vested in Government**

The property in records kept by or in the custody of a public body or any provincial officer in pursuance of the officer's duty as such officer is vested in the Government. *2001,c.28,s.19.*

**20. Regulations**

The Lieutenant Governor in Council may make regulations

- (a) designating and establishing classes of records for the purposes of retention, destruction or permanent preservation of the records of a public body;
- (b) respecting practices to be observed in dealing with the records for the purposes of disposition, retention or transfer of records to the Public Archives and Records Office;
- (c) designating as a public body an agency, association, board, commission, committee, council, foundation, office, tribunal, task force or other body, whether incorporated or unincorporated,
  - (i) of which any member, or any member of its governing body, is appointed by the Lieutenant Governor in Council or a member of the Executive Council,
  - (ii) in which the Government or an agency of Government has a controlling interest in the share capital, or
  - (iii) that performs functions pursuant to an enactment.
- (d) defining any word or expression used in this Act; and
- (e) respecting any other matter necessary for or ancillary to the administration of this Act. *2001,c.28,s.20; 2015,c.20,s.2.*

**21. Repeal**

The *Archives Act* R.S.P.E.I. 1988, Cap. A-19 is repealed. *2001,c.28,s.21.*